



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

 UNIVERSAL AMERICAN CORP.)
 by change of name from Universal)
 American Financial Corp.)
)
 OPPOSER)
)
 v.)
)
 LAWTON PRINTING, INC.)
)
 APPLICANT)

Opposition No.: 91179933
 (Serial No. 78/795,258)

MOTION TO AMEND THE NOTICE OF OPPOSITION

Opposer, through its attorneys, moves the Trademark Trial and Appeal Board to amend the Notice of Opposition under the Federal Rules of Civil Procedure Rule 15 based on the following:

1. On October 1, 2007, Opposer filed two notices of opposition against two applications filed by the same Applicant.
2. Opposition No. 91179933 was filed on October 1, 2007 against Application Serial NO. 78/795,258 for registration of the SENIOR LIVING STRATEGIES mark for various goods.
3. Opposition No. 91179963 was filed on October 1, 2007 against Application Serial No. 78/795,335 for registration of the SENIOR LIVING STRATEGIES mark for various services.
4. A few weeks ago, Opposer determined that the Notice of Opposition was flawed since page two was missing. Instead, Opposer had accidentally included two pages which were number page three.
5. Page 3, beginning with Paragraph 4, was incorrectly incorporated into the Notice of Opposition, from the Notice of Opposition No. 91179963.



03-31-2008

6. Opposer requests the Board to allow Opposer to substitute the correct page which was among the pages that Opposer's counsel signed. A copy of the missing page is attached as Exhibit A.

7. Federal Rules of Civil Procedure 15 allows a "party to amend a pleading either by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

8. In this case, justice requires the amendment for several reasons.

9. First, both of the Notices of Opposition included the exact same allegations with the exception that each one focused on the goods listed in the respective application and the other for the services listed in the companion.

10. Second, Applicant is already aware of the claims made by the Opposer, since Opposition No. 91179963 contains the same facts and allegations as the instant notice of Opposition. Therefore, the Applicant would not be surprised by the facts and claims contained in the instant case.

11. Third, if the Board grants Opposer's Motion to Consolidate, both parties will save Board resources. In addition, the Applicant will be saved the time and expense of defending two separate actions.

12. Fourth, if the motion is not granted, then the Opposer will be compelled to file a Cancellation proceeding against the mark in order to protect its valuable LIVING STRATEGIES trademark.

13. Fifth, the Applicant has not yet served any discovery in either case. Since the facts and the claims are the same, the Applicant will be saved the expense.

14. Sixth, if Opposer's Motion to Extend the Discovery Schedule is granted, the Applicant will have sufficient time to properly prepare and serve discovery relevant to each action. In addition, since the Board normally grants an extension of the discovery period when it consolidates cases, the Applicant will not be harmed.

15. In this case, justice requires the Amendment of the Notice of Opposition. The Amendment will benefit both parties as well as the Trademark Trial and Appeal Board.

WHEREFORE, Opposer requests the Trademark Trial and Appeal Board to grant the Motion to Amend the Notice of Opposition to include the facts and allegations contained within page two. .

Respectfully submitted,

UNIVERSAL AMERICAN CORP.
by Change of Name from Universal
American Financial Corp.

By: 

Barth X. deRosa
Ruth Mae Finch
DICKINSON WRIGHT PLLC
1901 L Street, N.W.
Washington, D.C. 20036-3506
(202) 457-0160

Counsel for Opposer

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Opposer's Motion to Amend the Notice of Opposition and Exhibits and the Amended Notice of Opposition are being forwarded this 31, day of March 2008, to counsel for the Applicant, by first class mail, postage prepaid and addressed to:

Mark W. Hendricksen
Wells St. John P.S.
601 W. 1st Avenue
Suite 1300
Spokane Washington 99201



Ruth Mae Finch

EXHIBIT (A)

International Drive, Suite 190, Rye Brook, New York 10573, (hereinafter called "Opposer") believes that it may be damaged by such registration and, with time extended, hereby opposes its registration.

The grounds for opposition under Sections 2(a) and 2(d) of the Lanham Act, as amended, are as follows:

1. Opposer is a health and life insurance holding company with an emphasis on providing a broad array of health insurance and managed care products and services to the growing senior population. Through its various subsidiaries, a network of over 23,000 independent insurance agents, brokers and organizations, and its career agent network of over 750 career agents located in over 97 branch offices, Opposer has provided insurance and financial related services to millions of customers throughout the United States. Opposer's range of products and services presently include, but are not limited to, supplemental health and medical insurance, HMO plans, prescription drug benefit plans, life insurance, acute recovery care, senior dental and hospital indemnity insurance, home health care, disability insurance and administrative services. The latter includes underwriting, billing and collection, verification, policy holder's services, claims adjudication and payment, clinical case management, case assessment, referrals to healthcare facilities, enrollment, comprehensive member support services, educational services and the dissemination of educational materials for others in the foregoing fields.

2. Since prior to January 1, 2005, Applicant's alleged first use date, Opposer through its subsidiary, Living Strategies, Inc., has been, and is now using at common law, the mark LIVING STRATEGIES in commerce in connection with various secondary and ancillary services offered at common law and in connection with its primary service of providing elder and geriatric care services.

3. Opposer, by reason of an Assignment, is the owner of the following registration, which Opposer relies upon and which is valid, subsisting, unrevoked and incontestable:

Registration No. 2,432,877 covering the mark LIVING STRATEGIES for services in the field of elder adult housing and care needs, namely, consultation, assessment of individuals' needs, care plan development and evaluation, identification of appropriate facilities and placement of individuals, care program setup and implementation and care management placement of individuals' care.

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OPPOSER)	Opposition No.: 91179933
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v.)	(Serial No. 78/795,258)
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LAWTON PRINTING, INC.)	
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APPLICANT)	

AMENDED NOTICE OF OPPOSITION

In the matter of Application Serial No. 78/795,258 for the mark "SENIOR LIVING STRATEGIES and Design" published April 3, 2007 for use in connection with "guide books featuring information about legal affairs, financial affairs, safety, security and government and businesses providing services concerning such topics" (hereinafter "Applicant's products") filed on January 19, 2006 by Lawton Printing, Inc., (hereinafter "Applicant"), a corporation organized under the laws of the state of Washington, having a principal place of business at 4111 E. Mission, Spokane, Washington 99202 and Universal American Financial Corp., duly organized under the laws of the state of New York, having its principal place of business at 6 International Drive, Suite 190, Rye Brook, New York 10573, (hereinafter called "Opposer") believes that it may be damaged by such registration and, with time extended, hereby opposes its registration.

The grounds for opposition under Sections 2(a) and 2(d) of the Lanham Act, as amended, are as follows:

1. Opposer is a health and life insurance holding company with an emphasis on providing a broad array of health insurance and managed care products and services to the growing senior population. Through its various subsidiaries, a network of over 23,000 independent insurance agents, brokers and organizations, and its career agent network of over

750 career agents located in over 97 branch offices, Opposer has provided insurance and financial related services to millions of customers throughout the United States. Opposer's range of products and services presently include, but are not limited to, supplemental health and medical insurance, HMO plans, prescription drug benefit plans, life insurance, acute recovery care, senior dental and hospital indemnity insurance, home health care, disability insurance and administrative services. The latter includes underwriting, billing and collection, verification, policy holder's services, claims adjudication and payment, clinical case management, case assessment, referrals to healthcare facilities, enrollment, comprehensive member support services, educational services and the dissemination of educational materials for others in the foregoing fields.

2. Since prior to January 1, 2005, Applicant's alleged first use date, Opposer through its subsidiary, Living Strategies, Inc., has been, and is now using at common law, the mark LIVING STRATEGIES in commerce in connection with various publications offered and disseminated in connection with its rendering of elder care and geriatric care related services.

3. Opposer, by reason of an Assignment, is the owner of the following registration, which Opposer relies upon and which is valid, subsisting, unrevoked and incontestable:

Registration No. 2,432,877 covering the mark LIVING STRATEGIES for services in the field of elder adult housing and care needs, namely, consultation, assessment of individuals' needs, care plan development and evaluation, identification of appropriate facilities and placement of individuals, care program setup and implementation and care management placement of individuals' care.

4. The products of the Applicant as described in its application are closely related, if not identical, to the various services and products offered by Opposer and described in paragraphs 1 through 3. Many of the services and products offered by Opposer under its LIVING STRATEGIES marks and name are likely to be directed to and be used and purchased by the same class of persons who are likely to purchase and use Applicant's products, which, on information and belief, are offered and disseminated in connection with various elder care related services offered by Applicant under the mark SENIOR LIVING STRATEGIES as used at common law. These purchasers are apt to believe that Applicant's products branded with the "SENIOR LIVING STRATEGIES" mark and name are somehow related, endorsed or sponsored by Opposer, all to the detriment and irreparable harm of Opposer

5. On information and belief, Applicant has made no use of its alleged mark in the United States for any product or service prior to its alleged first use date of January 1, 2005, a date that is subsequent to Opposer's dates of first use for its "LIVING STRATEGIES" mark and name.

6. Applicant's "SENIOR LIVING STRATEGIES" mark is so confusingly similar in sight, sound, meaning and commercial impression to Opposer's "LIVING STRATEGIES" mark and name which the public and trade have associated with and recognize with Opposer, as to be likely, when applied to the services and products of Applicant, to cause confusion, to disparage or to deceive purchasers in the mistaken believe that the services and products of Applicant emanate from, or are offered and disseminated under Opposer's approval, sponsorship and/or control, all to the detriment and irreparable harm of Opposer.

7. Opposer has expended considerable time, effort, and money in advertising and otherwise in promoting its services and products and in encouraging the public and trade to recognize its "LIVING STRATEGIES" mark and name, that unless refused, Applicant's registration of "SENIOR LIVING STRATEGIES and Design" mark will enable Applicant to reap the benefits of such goodwill attached to Opposer's "LIVING STRATEGIES" mark and name, and Opposer will suffer irreparable damage and injury as a result of the confusion that is likely to arise from its inability to control its reputation.

8. By entering a disclaimer of the mark "SENIOR LIVING STRATEGIES" Applicant is indeed causing damage to Opposer, insofar as such a disclaimer on the public record effectively invalidates Opposer's existing registration by circumventing the conclusive presumptions that the "LIVING STRATEGIES" mark and name is inherently distinctive and by suggesting to the public through constructive notice that Opposer's mark "LIVING STRATEGIES" is in the public domain, is merely descriptive, if not generic, and is available for all to use to the detriment and irreparable harm of Opposer.

9. In view of the similarity of Applicant's "SENIOR LIVING STRATEGIES and Design" mark to Opposer's "LIVING STRATEGIES" mark and name, and in view of the related or identical nature of the services and products offered and disseminated by both Applicant and Opposer, it is alleged that Applicant's mark consists of, and comprises matter which may disparage and falsely suggest a trade connection between Applicant and Opposer.

10. Since prior to Applicant's alleged first use date, Opposer continuously and in good faith used the "LIVING STRATEGIES" mark and name as described in paragraphs 1 through 3. As a consequence of the use of such mark and name, Opposer's "LIVING STRATEGIES" mark and name has become distinctive in the minds of the trade, business community, and the public of the quality of goods and services offered by Opposer, and such mark points uniquely and unmistakably to Opposer. Consequently, Opposer's mark has become "famous" for purposes of Section 2(a) and 2(d) of the Act, and Opposer has millions of customers and prospective customers who have been exposed to the "LIVING STRATEGIES" mark and name through Opposer's various services and products.

11. Applicant's registration for the "SENIOR LIVING STRATEGIES and Design" mark is a close approximation of Opposer's "LIVING STRATEGIES" mark, name and identity, and is likely to cause injury to the business, goodwill and reputation of Opposer since Opposer's customers and purchasers of Opposer's goods and services may erroneously believe that Applicant is in some way associated with Opposer, all to Opposer's injury and detriment.

12. Opposer is not connected in any way with the business or affairs of the Applicant, with the services and products offered, sponsored or endorsed by Applicant, nor does it have any control over the nature of quality of the services sold thereunder by Applicant.

13. By reason of the "fame" for Section 2(a) and 2(d) purposes and reputation of Opposer's "LIVING STRATEGIES" mark and name, and because of Opposer's corporate identity and persona, a trade connection with Opposer will be presumed by the public and by the trade by reason of Applicant's registration.

14. Unless Applicant's registration for "SENIOR LIVING STRATEGIES and Design" mark is denied by the Trademark Trial and Appeal Board, Opposer will suffer irreparable harm.

WHEREFORE, Opposer respectfully prays that registration of Applicant's mark be denied by the Trademark Trial and Appeal Board and that the opposition be sustained in favor of Opposer.

Please recognize Barth X. deRosa, Ruth Mae Finch, Steve Lustig and the firm of Dickinson Wright PLLC, 1901 L Street, N.W., Suite 800, Washington, D.C. 20036, all members of a bar, as the attorneys for Opposer.

A check for \$300.00 for the government fee for 1 class is attached hereto together with two copies of the Notice of Opposition.

Respectfully submitted,

Respectfully submitted,

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